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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/748,454

Filing Date: December 30, 2003

Appellant(s): CLOSE ET AL.

Neil M. Batavia
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed September 10, 2007 appealing from the Office action mailed May 30, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

4,784,892	STOREY et al.	11-1988
6,177,370 B1	SKOOG et al.	1-2001
2002/0127937 A1	LANGE et al.	9-2002
WO 99/13860	RICHARDS	3-1999

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

- **Claims 1, 32 and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over STOREY et al. (US 4,784,892) in view of SKOOG et al. (US 6,177,370 B1).**

STOREY et al. teaches a non-woven material useful for disposable wipers that comprises a layer of meltblown polymeric microfibers inter-mixed with fibers of absorbent material, and at least one layer of meltblown polymeric microfibers. (Abstract) In Figure 2, the reference shows layer 18 comprised of meltblown and pulp fibers (equated by the Examiner to a coform web), outer layers 8, 20 comprised of meltblown fibers. (Refer to Col. 3, lines 22-48) The reference teaches that the surface layers give the product a good durability with low linting and the product has the clean wiping characteristics typical of meltblown materials due to the fact that the surface layers are comprised wholly of polymeric microfibers. (Col. 2, lines 3-11) The reference teaches that the central layer could include wood pulp content of 50 to 80 percent or even more by weight. (Col. 2, lines 39-42)

STOREY et al. discloses the claimed invention except that the meltblown fibers are present in amounts of at least 15 gsm in the surface layers of the nonwoven material (refer to tables in Col. 4 and 5 which shows an example of a food service wiper), instead of less than about 8 gsm as claimed herein.

SKOOG et al. teaches a fabric useful in the construction of industrial wipes. In one of the embodiments (Figure 3), uses a first meltblown web layer 128 and a second meltblown web layer 148 to help prevent linting. (Col. 5, lines 21-42) The reference further teaches the use of thermoplastic materials to include styrene polymers and copolymers, acrylics, polyethylenes,

polypropylene, vinyls and nylons. (Col. 2, lines 50-56) The reference teaches that the meltblown layers 128 and 148 may have a basis weight from about 7 gsm to about 20 gsm, encompassing the claimed values. (Refer to Col. 5, lines 52-53) It is noted herein that is the Examiner's interpretation that the basis values disclosed by the reference refer to the combined layers 128 and 148. This is consistent with the references disclosure of information. (Refer to Table 3 that provides values for combined layers of the same material). It is the Examiner's position that both references use meltblown layers of synthetic materials with the purpose of providing the wipes with low linting properties therefore it would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the basis weight of the outer layers to be lower since SKOOG et al. has shown that layers with basis weight as low as about 3 gsm will also provide the low linting effect aimed by STOREY. It is further noted that the examples shown by STOREY are directed to food service wipes that would require higher strength, it is the Examiner's position that changes in the basis weight of the surface layers will correlate to the particular application for which the wipe is going to be used. It is well settled that determination of optimum values of cause effective variables such as basis weight is within the skill of one practicing the art. *In re Boesch*, 205 USPQ 215 (CCPA 1980).

With regards to claim 8, STOREY et al. discloses the claimed invention except that it uses polypropylene meltblown fibers instead of meltblown fibers from the materials listed in claims 8, SKOOG et al. shows that styrene polymers, polypropylene and acrylics are equivalent materials known in the art. Therefore, because these materials were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute polypropylene for acrylics or styrene polymers.

With regards to claim 16, it is the Examiner's interpretation that the reduced slough is inherent to the material taught by the prior art of record in view of the similarities when compared to the claimed invention. With regards to the claimed cup crush, it is noted that such property would be inherent to the structure of the prior art of record. Reliance upon inherency is not improper even though rejection is based on Section 103 instead of Section 102. *In re Skoner, et al.* (CCPA) 186 USPQ 80

- **Claim 77 is rejected under 35 U.S.C. 103(a) as being unpatentable over STOREY et al. and SKOOG et al. as applied above, and further in view of LANGE et al. (US 2002/0127937 A1) and RICHARDS (WO 99/13860).**

LANGE et al. discloses a wet-wipe comprising a non-woven composite elastic material comprising a nonwoven elastic layer; and a non-woven gatherable layer. (Abstract)

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to provide the structure with an elastic layer with the motivation of producing wipes with a softer cloth like feel as disclosed by LANGE et al. (Abstract)

RICHARDS discloses a pre-moistened wipe having a substrate impregnated with a lotion. The lotion includes a silicon-based sulfocccinate, and can also include components such as fragrance components and preservatives. (Abstract) The substrate can comprise a woven or nonwoven web formed of natural fibers, synthetic fibers, or combinations thereof. (Page 4, lines 2-3) The substrate can comprise an air laid web of nonwoven fibers. (Page 3, lines 24-25)

It is the Examiner's position that it would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the wipe of STOREY et al. and provide with lotion comprising a silicone based sulfosuccinate with the motivation of producing a

moistened wipe with a lotion that provides gentle yet effective cleaning, and can assist in maintaining the fragrance components in solution in the lotion as disclosed by RICHARDS (Refer to abstract).

(10) Response to Argument

- Appellants argue that the Storey et al. reference teaches away from meltblown fibers in an amount less than about 8 gsm forming the exterior surface of a nonwoven material.

It is the Examiner's position that there is no clear distinction between "about 8 gsm" claimed in the present invention and the "about 10 gsm" of the prior art of Storey et al. It is noted that the Specification of the present invention discloses exemplary embodiments in which the meltblown fibers are present in an amount less than about 8 gsm (Page 23, lines 10-21), however, unexpected results are not shown. It is also noted that the prior art of STOREY et al. teaches that the surface layers give the product a good durability with low linting. (Col. 2, lines 6-7); and while it does teach that the minimum weight could be about 10 gsm, it does not teach away from meltblown fibers in an amount less than about 8 gsm as it does not indicate that using basis weights of less than 10 gsm would be detrimental to the invention and further it is the Examiner's position that about 10 gsm will provide some overlapping with the claimed values.

- Appellants further argue that the combination of Storey et al. and Skoog et al. fails to teach or suggest all the limitations of independent claims 1, 32 and 55.

It is noted that the Examiner has relied on the teachings of Skoog et al. to show that the use of meltblown layers at a basis weight of less than about 8 gsm is known in

the art to prevent linting when laid on the surface of pulp containing materials. The combination of Storey et al. and Skoog et al. show that it would be obvious to provide the meltblown layers of the primary reference with a lower basis weight and the combination would have yielded the predictable result of preventing linting. It is further noted that Appellant's arguments are bodily incorporating the structure of Skoog et al. into the structure of Storey et al., which is not intended in the combination presented by the Examiner in the rejection. Thus, the combination of Storey et al. in view of Skoog et al. provide the structure of Storey et al. with a meltblown outer surface with a basis weight that is less than about 10 gsm and still provide the same linting prevention properties. Generally, differences in concentration or temperature will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such concentration or temperature is critical. “[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation.” In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955)

- With regards to the rejection of independent claim 77, Appellants relied on same arguments of claims 1, 32 and 55. Arguments are equally found unpersuasive.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Norca L. Torres-Velazquez/

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